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SUPREME COURT, U.S.

No. 07-601

Supreme Court of the United States

STEPHEN J. WILLIAMS,

Petitioner,

vs.

DISTRICT OF COLUMBIA COURT OF APPEALS, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR REHEARING

Stephen J. Williams
Petitioner
12 September Road
Storrs, Connecticut 06268-2806
USA
+1-860-450-1288

TABLE OF CONTENTS

PROCEDURAL HISTORY 1
A. Relevant proceedings in this matter 1
B. Relevant proceedings in the related matter of Williams v. Appellate Division of the Supreme Court of the State of New York, First Judicial Department 3
REASON FOR GRANTING THIS PETITION FOR REHEARING 4
A. Petitioner's second petition for writ of certiorari presents similar issues and is predicated upon the same set of underlying facts. Therefore, judicial economy and equity weighs in favor of considering Petitioner's two petitions for writ of certiorari in tandem. 4
CONCLUSION 7
CERTIFICATION 1

CASES

In re Williams, 33 A.D.3d 38, 819 N.Y.S.2d 508 (1st Dept., 2006), *leave to appeal dismissed in part, denied in part*, 8 N.Y.3d 858, 863 N.E.2d 109, 831 N.Y.S.2d 105 (2007), *appeal dismissed*, 8 N.Y.3d 1007, 870 N.E.2d 687, 839 N.Y.S.2d 448 (2007), *re-argument denied*, 9 N.Y.3d 919, 875 N.E.2d 892, 844 N.Y.S.2d 173 (2007) 3

R.J. Reynolds Tobacco Co. v. Durham County, N.C., 479 U.S. 130 (1986) 3

Selling v. Radford, 243 U.S. 46 (1917) 5, 6

Williams v. District of Columbia Court of Appeals, 128 S.Ct. 1075 (Mem.) (2008) 1

Williams v. District of Columbia Court of Appeals, 128 S.Ct. 1109 (Mem.) (2008) 1

STATUTES

Judiciary Law § 90(6) 6

RULES

22 NYCRR § 603.3 6

D.C. Bar Rule X, § 3.8(f) 2

D.C. Bar Rule XI, § 11(d) 5

Sup. Ct. R. 44.1 1

Sup. Ct. R. 44.2 1

Sup. Ct. R. 8.1 5

TREATISES

Model Rules for Lawyer Disciplinary Enforcement, Rule 22 ..... 4, 5

Washington Lawyer, February 2008 2

Pursuant to Rule 44.2 of the Rules of this Court, Petitioner petitions for rehearing on Petitioner's petition for a writ of certiorari ("first Petition") directed to the District of Columbia Court of Appeals ("Court of Appeals") which was denied by the Court on 14 January 2008. *Williams v. District of Columbia Court of Appeals*, 128 S.Ct. 1075 (Mem.) (2008).

Furthermore, pursuant to Rule 44.1, Petitioner petitions this Court for rehearing on Petitioner's application for stay pending disposition of the petition for writ of certiorari which was referred to the Court by Justice Ginsburg and also denied by the Court on 14 January 2008. *Williams v. District of Columbia Court of Appeals*, 128 S.Ct. 1109 (Mem.) (07A415, 14 Jan. 2008).[1]

PROCEDURAL HISTORY

A. Relevant proceedings in this matter

Petitioner's Petition was denied by the Court on 14 January 2008. *Williams v. District of Columbia Court of Appeals*, 128 S.Ct. 1075 (Mem.) (2008). The Court also denied Petitioner's application for stay, which had been referred to the Court by Justice Ginsburg, on that same date. *Williams v. District of Columbia Court of Appeals*, 128 S.Ct. 1109 (Mem.) (2008).

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[1] This Petition for Rehearing is timely filed. See 21 February 2008 letter of Mr. Jeffrey Atkins on behalf of the Clerk.

Petitioner remains suspended by the District of Columbia Court of Appeals. Petitioner has now been summarily suspended without due process for one full year. There is no expectation that Petitioner's summary suspension will end anytime in the foreseeable future.

Furthermore, shortly following the denial of certiorari by this Court, the Bar Counsel published a column in the District of Columbia Bar magazine, the *Washington Lawyer*, in which he discussed the "disciplinary action" taken against Petitioner. *Washington Lawyer*, February 2008, p. 12.[2] This column was one-sided, riddled with factual errors and showed Petitioner in a very poor light. This has served to heighten condemnation of Petitioner even though there has not been a final determination of the matter in either the original jurisdiction or in the District of Columbia. Because Bar Counsel published his column in violation of ethical rule D.C. Bar Rule X, § 3.8(f), Petitioner moved the Court of Appeals to disqualify the Office of Bar Counsel from continuing to prosecute the disciplinary action. (25 February 2008 Motion to Disqualify the Office of Bar Counsel.) That motion is currently pending before the Court of Appeals.[3]

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[2] The column is also published in the Bar Counsel's section of the District of Columbia Bar's web site in a section entitled Bar Counsel's Column and again in a section reprinting the current issue and back issues of the magazine. http://www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/february_2008/barcounsel.cfm (visited 6 March 2008). Thus, Bar Counsel's columns are available to the public worldwide through Internet search engines such as Google.

[3] Bar Counsel is a respondent in this proceeding and is also the only respondent to have appeared in this Court.

B. Relevant proceedings in the related matter of Williams v. Appellate Division of the Supreme Court of the State of New York, First Judicial Department

Based on the same order of the Connecticut judge, and on the same principles of reciprocal discipline, and similarly without affording Petitioner a hearing, the Appellate Division of the Supreme Court of the State of New York, First Judicial Department ("First Department") ordered that Petitioner's right to practice law in New York be suspended. Petitioner has pursued the matter through motions for leave to appeal directed to the First Department and the New York Court of Appeals, an appeal and a petition to reargue – all of which have been either denied or dismissed. *In re Williams*, 33 A.D.3d 38, 819 N.Y.S.2d 508 (1st Dept., 2006), *leave to appeal dismissed in part, denied in part*, 8 N.Y.3d 858, 863 N.E.2d 109, 831 N.Y.S.2d 105 (2007), *appeal dismissed*, 8 N.Y.3d 1007, 870 N.E.2d 687, 839 N.Y.S.2d 448 (2007), *re-argument denied*, 9 N.Y.3d 919, 875 N.E.2d 892, 844 N.Y.S.2d 173 (2007).[4]

On 10 December 2007, Justice Ginsburg ordered that Petitioner's petition for writ of certiorari in this related matter ("second Petition") may be filed no

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[4] The appeal was dismissed by he New York Court of Appeals "upon the ground that no substantial constitutional question is directly involved." Dismissal on that basis is considered a decision on the merits. *R.J. Reynolds Tobacco Co. v. Durham County, N.C.*, 479 U.S. 130, 138-9 (1986).

later than Friday, 15 February 2008. (Application No. 07A487.)[5]

REASON FOR GRANTING THIS PETITION FOR REHEARING

A. Petitioner's second petition for writ of certiorari presents similar issues and is predicated upon the same set of underlying facts. Therefore, judicial economy and equity weighs in favor of considering Petitioner's two petitions for writ of certiorari in tandem.

Petitioner's suspension in the District of Columbia and his suspension in New York are both predicated on a policy of reciprocal discipline. Unlike in this Court and in the subordinate federal courts, the reciprocal recognition by state courts of discipline originating in other jurisdictions is a relatively new phenomenon. That phenomenon has been driven, in large measure, by Rule 22 of the Model Rules for Lawyer Disciplinary Enforcement as promulgated by the ABA's Standing Committee on Professional Discipline ("ABA Rule 22").[6] The rule provides as a policy goal that:

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[5] The Petition for Certiorari will be timely. See 21 February 2008 letter of Mr. Erik Fossum on behalf of the Clerk.

[6] The ABA Model Rules for Lawyer Disciplinary Enforcement were initially adopted by the American Bar Association House of Delegates on August 11, 1993 and subsequently amended in 1995, 1999 and 2002. Model Rules for Lawyer Disciplinary Enforcement, 2007 Edition, copyright page.

> If a lawyer suspended or disbarred in one jurisdiction is also admitted in another jurisdiction and no action can be taken against the lawyer until a new disciplinary proceeding is instituted, tried, and concluded, the public in the second jurisdiction is left unprotected against a lawyer who has been judicially determined to be unfit. Any procedure which so exposes innocent clients to harm cannot be justified. The spectacle of a lawyer disbarred in one jurisdiction yet permitted to practice elsewhere exposes the profession to criticism and undermines public confidence in the administration of justice.

Commentary to ABA Rule 22.

Unfortunately, the immediacy and automaticity which the rule has as its goal, is directly at odds with this Court's guidelines for reciprocal discipline as contained in *Selling v. Radford*, 243 U.S. 46, 51-52 (1917), that the attorney first be afforded an opportunity to raise certain specific defenses. Some jurisdictions, such as the District of Columbia, and even this Court, have attempted to resolve this dilemma by providing for immediacy through provisions in their rules for automatic interim suspensions. D.C. Bar Rule XI, § 11(d); Sup. Ct. R. 8.1. Still other jurisdictions, which make no provision in their reciprocal discipline rules for the automatic interim suspension of attorneys, attempt to resolve the dilemma by streamlining their proceedings to such an extent that sometimes their proceedings do not even comport with their own rules. 22 NYCRR §

603.3; Judiciary Law § 90(6). The First Department falls into this latter category.

While Petitioner's first Petition took issue with the denial of due process under an automatic interim suspension rule and Petitioner's second Petition will challenge the First Department's policy of imposing final reciprocal discipline without affording an attorney a hearing, it is readily apparent that there is a much broader issue at play here which is whether *Selling*, decided in 1917, should in fact be *the* due process standard applicable to the states or whether the states must be allowed to fashion their own policies and practices on reciprocal discipline.

Because Petitioner's two petitions are simply two sides of the same coin, it should prove useful to the Court to consider both petitions in tandem. The District of Columbia and New York are today two of the most active jurisdictions as regards reciprocal discipline. If this Court were to grant certiorari, then it would be appropriate to afford both of these important jurisdictions the opportunity to be heard on the issue. Finally, considering both petitions in tandem would be most equitable. If this Court were to grant Petitioner's second Petition, then it would clearly be inequitable to allow Petitioner's suspension in the District of Columbia to continue unchallenged. This is especially true given the fresh due process violations which have taken place in that jurisdiction since the Court denied the first Petition.

CONCLUSION

For the forgoing reasons, Petitioner asks that the Court grant this Petition for Reargument so that it can consider whether to grant certiorari on this first Petition in tandem with its consideration of Petitioner's petition for writ of certiorari directed towards the New York Court of Appeals.

Respectfully submitted,

Stephen J. Williams,
Petitioner
12 September Road
Storrs
Connecticut 06268-2806
USA
+1-860-450-1288

CERTIFICATION

I certify, under penalty of perjury, that the grounds of this Petition are restricted to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

I further certify, under penalty of perjury, that his Petition is presented in good faith and not for delay.

_____

Stephen J. Williams,
Petitioner